U.S. Department of Justice
Office of Justice Programs
Corrections Program Office

OJP
Corrections Program Office

Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants

Answers to Frequently Asked Questions

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U.S. Department of Justice
Office of Justice Programs
810 Seventh Street, N.W.
Washington, D.C. 20531

Janet Reno
Attorney General

Raymond C. Fisher
Associate Attorney General

Laurie Robinson
Assistant Attorney General

Larry Meachum
Director - Corrections Program Office

Corrections Technical Assistance Line
(800) 848-6325

Office of Justice Programs
World Wide Web Homepage:
http://www.ojp.usdoj.gov

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Larry Meachum, Director
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The following are answers to frequently asked questions related to the Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Grants. Most of the questions have been raised by officials in the State offices responsible for administration of this formula grant program as well as by other interested parties. This document provides an interpretation of the program provisions and requirements as defined in the Program Guidance and Application Kit and should be used as a companion document to the Kit. The Office of Justice Programs will provide updates to this document, as appropriate, to assist the States with program implementation.

An asterisk (*) indicates questions that have been added since the last publication of this document. Two asterisks (**) indicate questions or responses that have been modified or clarified.

The major change in this version of the document relates to the statutory change allowing States, beginning in FY 1999, to use up to 10 percent of their VOI/TIS funds for costs associated with drug testing and intervention programs and with the baseline report required to meet the drug testing requirements (see questions F.41 and I.7-11).

A. Program Purpose

A.1 QUESTION: What are the purposes of the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program?

ANSWER: The purposes of the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program are to provide funds to States to:

- Build or expand correctional facilities to increase the bed capacity for the confinement of persons convicted of a Part 1 violent crime or adjudicated delinquents for an act which, if committed by an adult, would be a Part 1 violent crime.
- Build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted nonviolent offenders and criminal aliens, for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a Part 1 violent crime.
- Build or expand jails.

A.2 QUESTION: What does "build" mean?

ANSWER: **Build** means the erection, acquisition, renovation, repair, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of fixed furnishings and equipment therefor. It includes facility planning, prearchitectural programming, architectural design, construction administration, construction management, or project management. Land may not be purchased with grant funds. (Also see Section M - Private Facilities.)

A.3 QUESTION: What is meant by "expand"?

ANSWER: **Expand** means adding (building) new beds to, remodeling, or retrofitting existing facilities, or privatizing facilities for the purpose of increasing bed space for violent offenders or freeing existing prison space for the confinement of persons convicted of a Part 1 violent crime. The types of costs included under the definition of "build" apply to the expansion, remodeling, or retrofitting of facilities.

B. Eligibility

B.1 QUESTION: Who may apply for the formula grant funds?

ANSWER: Only States are eligible to apply. "State" is defined as the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. States may also apply through regional compacts.

B.2 QUESTION: Can States receive funds for both Violent Offender Incarceration and for Truth-in-Sentencing?

ANSWER: Yes. States that meet the eligibility criteria for each program can apply for and receive funding under both.

*** B.3 QUESTION: How much money is available for this program?**

ANSWER: The FY 1999 appropriation is $720.5 million, which includes set-asides for the State Criminal Alien Assistance Program (SCAAP) to reimburse State and local jurisdictions for incarcerating criminal aliens, reimbursements for holding Federal prisoners in State and local facilities, a discretionary grant program to build jails on tribal lands, and program administration. Approximately $481 million is available for distribution under the formula grant program in FY 1999. While Congress must appropriate funds for each fiscal year before grants can be made, authorized amounts through FY 2000 are:

Fiscal Year	Authorization	Appropriation	Formula Program
FY 1996	$ 997,500,000	$617,500,000	$391,671,450
FY 1997	1,330,000,000	670,000,000	471,456,375
FY 1998	2,527,000,000	720,500,000	509,000,000
FY 1999	2,660,000,000	720,500,000	480,884,500
FY 2000	2,753,100,000		

B.4 QUESTION: Will the funds be awarded to the Department of Corrections?

ANSWER: The Governors designate a State agency to administer the program, which may be the Department of Corrections or another agency within State government. The State office may make subawards to other State agencies and units of local government.

B.5 QUESTION: Can a State participate in a regional compact for the purpose of building a regional facility and also apply for its own award to build or expand other facilities within the State?

ANSWER: No. States are statutorily prohibited from receiving a grant both individually and as part of a compact.

B.6 QUESTION: Must all of the funds awarded to a regional compact be used for regional facilities?

ANSWER: No. States could form a compact for purposes of building a regional facility. Any funds not used for this purpose could be passed through to the participating States, but all the funds for the participating States will be awarded to the compact. The funds must be spent for the purposes defined in the Act.

B.7 QUESTION: If a State participates in a regional compact one year, can it apply individually the following year?

ANSWER: Yes. However, the State may not receive **dual** funding as part of a compact and funding on its own. The amount of funds is finite and the State may only use the maximum of its allocation. The State may choose to split the maximum amount of its allocation providing some for a compact and some exclusively for its own use.

C. Violent Offender Incarceration Grants—Eligibility Requirements

C.1 QUESTION: To qualify for Tier 1 funding, a State must provide an assurance in its application that it has implemented, or will implement, correctional policies and programs, including Truth-in-Sentencing laws related to the following criteria. What is meant by:

- **# Ensure that violent offenders serve a substantial portion of the sentences imposed?**
- **# Provide sufficiently severe punishment for violent offenders, including violent juvenile offenders?**
- **# Ensure that the prison time served is appropriately related to the determination that the inmate is a violent offender?**
- **# Ensure that the prison time served is deemed necessary to protect the public?**

ANSWER: These terms are not defined in the statute. Each State should define these terms relative to the circumstances within the State and show how the State will demonstrate a commitment to their implementation.

C.2 QUESTION: To qualify for Tier 1, a State must assure that "it has implemented, or will implement, correctional policies and programs, including truth-in-sentencing laws...." Does this assurance commit the State to passing and implementing laws that would meet the Truth-in-Sentencing Incentive Grants requirement that violent offenders serve at least 85 percent of the sentence imposed?

ANSWER: No. These policies, programs, and laws must address the three criteria described under the Tier 1 requirements. It is up to the State to define "substantial portion of sentences, sufficiently severe punishment, and appropriate prison time," which can be less stringent than the 85 percent requirement for Truth-in-Sentencing.

C.3 QUESTION: Who must sign the assurance needed to qualify for Tier 1?

ANSWER: The assurance should be signed by the person designated by the Governor who can certify that the State has implemented or will make a good faith effort to implement the Tier 1 criteria.

C.4 QUESTION: To qualify for funding under Tiers 2 and/or 3, must a State also qualify for funding under the lower tiers?

ANSWER: All States must qualify for Tier 1 in order to be eligible for funding under Tiers 2 and/or 3. However, a State could qualify for Tier 3 funding without qualifying for funding under Tier 2.

C.5 QUESTION: What is the basis of Tier 1 funding?

ANSWER: Eighty-five percent of the total funds available for the Violent Offender Incarceration Program will be used for Tiers 1 and 2. A base allocation of 0.75 percent of this amount (0.05 for the Virgin Islands and the Pacific Territories) will be awarded as Tier 1 and the remainder will be awarded as Tier 2.

C.6 QUESTION: Are the States required to provide the percentage of persons arrested for a Part 1 violent crime who are sentenced to prison or will this be provided by the UCR?

ANSWER: The States are not required to do the computation. States are required to complete section 1 of the Data for Determining Eligibility (DDE) form related to new court commitments of sentenced violent prisoners. OJP will use these data and data on arrests for Part 1 violent crimes as reported to and provided by the UCR to compute the percentage of persons arrested for a Part 1 violent crime who are sentenced to prison. (The DDE form is found in the Program Guidance and Application Kit.)

C.7 QUESTION: Arrest figures as reported to and published in the UCR will be used to determine if a State meets the eligibility requirements for Tiers 2 and 3. Will a State be at a disadvantage if some of its jurisdictions do not report arrest data?

ANSWER: No. The data from each State are used to make comparisons within that State over time. The Bureau of Justice Statistics will compute statewide estimates based on the data that have been reported. Since the FBI does not publish UCR data for the Territories, a special effort is conducted to collect the needed data from them and from several States that have experienced reporting problems due to their conversion to the National Incident-Based Reporting System (NIBRS).

C.8 QUESTION: If a State believes that its arrest data are incomplete, can it provide more complete arrest data directly to OJP?

ANSWER: No. The data that are submitted in the UCR will serve as the official data, with the exceptions described above. Since no Tier 2 or 3 awards can be made until all eligible States have been identified, the acceptance and verification of new data would delay awards to all States. The FBI currently does statewide estimates for reported crime and verifies those estimates with the States. The Bureau of Justice Statistics will use a similar methodology to compute statewide estimates for Part 1 violent crime arrests. States are encouraged to work on improving the quality of UCR data reported to the FBI for future years.

D. Truth-in-Sentencing Incentive Grants—Eligibility Requirements

D.1 QUESTION: How is sentence length defined for purposes of Truth-in-Sentencing?

ANSWER: Sentence length is the term of incarceration set by the court at the time of sentencing or, for indeterminate sentencing States, set by a parole authority based on sentencing and release guidelines.

D.2 QUESTION: How is time served calculated?

ANSWER: Time served includes only the actual time an offender is committed to the care and custody of the correctional agency, and ***does not*** include any administrative or statutory time credits, such as reductions for good behavior, earned time, meritorious conduct, population control releases, etc. Jail time served can be included in the computation, as well as time served in community and reintegration placements, but ***not*** probation and parole time.

D.3 QUESTION: Is time served based on the maximum aggregate of all sentences for the inmate or is it based on the sentence for the targeted offenses? For example, a rape and sodomy conviction would yield two prison terms that may run concurrently or consecutively. Would we aggregate the terms or only count the rape term when figuring the percentage of time served?

ANSWER: If both crimes are Part 1 violent crimes, the offender would have to serve 85 percent of the total of the two consecutive sentences or the longer of the two concurrent sentences. If only one of the crimes is a Part 1 violent crime, the time served is based on the sentence for the Part 1 violent crime only.

D.4 QUESTION: Does time an offender serves in a community-based correctional residential placement, such as a transition program or halfway house, count when computing the 85 percent?

ANSWER: Yes.

D.5 QUESTION: What is the sentence length for computing time served in a State that imposes a two-part sentence—a prison term to be served in prison and a "conditional release" term to be served under community supervision? Conditional release is a statutory release mechanism that is activated if the inmate is not paroled earlier by the parole board. For example, the judge imposes a sentence of 15 years, which is interpreted as being a prison term of 12 years and a conditional release term of 3 years based on a formula in the statute.

ANSWER: If the conditional release is based on a formula in the statute and is applied automatically to each sentence, then the computation of the percentage of sentence served should be based on the prison term (12 years in this example), excluding the term of conditional release.

D.6 QUESTION: How is a sentence with part of the time suspended by the judge at the time of sentencing handled (e.g., a 5-year prison sentence, with 2 years suspended)?

ANSWER: The sentence to be served, for purposes of calculating the 85 percent, would be 3 years. The suspended portion of the sentence would not be considered in determining the prison term and calculating the 85 percent of sentence served.

D.7 QUESTION: Does a State that requires Part 1 violent offenders to serve at least 85 percent of the minimum term of imprisonment of a two-part sentence qualify for Truth-in-Sentencing funds if the term of imprisonment is established by reducing the total sentence by a good time credit that may be reduced if the offender does not follow the rules of the correctional facility? The second part of the sentence is a maximum term of supervised release that is served following the minimum term of imprisonment, adjusted for any good conduct deductions the offender may have forfeited.

ANSWER: No. The Truth-in-Sentencing criteria require that violent offenders serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior). Granting, at the time of sentencing, a good time deduction that can be forfeited for rule violations has the same affect as providing good time deductions to inmates who earn them as they serve their sentence. Therefore, the State cannot deduct the good time credits to arrive at the minimum term of imprisonment to which the 85 percent rule is applied.

D.8 QUESTION: If a State has Truth-in-Sentencing laws that require Part 1 violent crime offenders in all but one category of crime (e.g., aggravated assault) to serve not less than 85 percent of the sentence imposed, could the State still qualify for funds?

ANSWER: The State could qualify for funds if it can demonstrate that the average sentence served for all Part 1 violent crime offenders is *on average* not less than 85 percent of the sentence imposed. The State also may apply for an alternative definition of violent crime.

D.9 QUESTION: What will be accepted as an alternative definition of violent crime?

ANSWER: The statute requires that Part 1 violent crimes be used in the formula to allocate funds to the eligible States. The Office of Justice Programs (OJP) will use Part 1 violent crimes as reported to and published by the Federal Bureau of Investigation (FBI) for this purpose. No alternative definitions will be approved for use in the formula. Likewise, data on arrests for Part 1 violent crimes will be provided by the FBI.

In providing data to qualify for **Violent Offender Incarceration Grants**, those States that can, should use the FBI's definitions of Part 1 violent crime. However, a provision for using an alternative definition, if approved by OJP, is provided for those States that have statutory crime classifications that do not conform exactly to the FBI's Part 1 violent crime definitions, making it difficult to identify the number of persons admitted to or released from prison for Part 1 violent crimes. The alternative definition must be as close to the Part 1 violent crime definitions as possible but may include or exclude a variation of an offense that is different from the FBI's definition. Total violent crimes, as described in the Data for Determining Eligibility forms, is a broader definition used by States to report data to the Bureau of Justice Statistics that has already been approved as an alternative definition.

Where a State does not require that all Part 1 violent offenders serve 85 percent, it may request approval of an alternative definition for use in the implementation of **Truth-in-Sentencing**. This definition should include most offenders sentenced for Part 1 violent crimes in addition to crimes considered by the State to be serious violent crimes.

D.10 QUESTION: What is the procedure for requesting approval to use an alternative definition?

ANSWER: A State that wishes to use an alternative definition for purposes of qualifying for Violent Offender Incarceration grants must explain why it is unable to provide the required data using the Part 1 violent crime definitions, list the crimes for which data will be provided, and explain the differences between these crimes and the Part 1 crimes as defined by the FBI. The request for an alternative definition for purposes of Truth-in-Sentencing should be accompanied by a list of the proposed crimes and their statutory definitions. The documentation should also include a comparison of the number of all Part 1 violent offenders sentenced to prison by crime type and the

number sentenced under the State's Truth-in-Sentencing law. The alternative definition may be submitted with the State's application for funds or may be submitted to the Corrections Program Office for review and approval in advance.

D.11 QUESTION: Can a State change its definition of violent offender during the life of the grant program (through FY 2000)?

ANSWER: A State applying under the Violent Offender Incarceration Grant Program must use the same definition from 1 year to the next, unless there has been a statutory change that changes the State's definition. The State must notify OJP of statutory changes to the definition. A Truth-in-Sentencing State may modify its definition of violent crime, subject to OJP approval.

D.12 QUESTION: Are States that receive approval to use an alternative definition of Part 1 violent crime required to use that same definition for both Violent Offender Incarceration and for Truth-in-Sentencing?

ANSWER: No (see D.8 and D.9).

D.13 QUESTION: Does the requirement that violent offenders serve "on average" at least 85 percent of the sentence imposed apply to individual offenses or an average of all violent offenses?

ANSWER: "On average" may apply to individuals within an offense type and/or to the various types of offenses.

For example, if some individuals sentenced to prison for robbery serve less than 85 percent of the sentence imposed and others serve more than 85 percent, the State must demonstrate that the average of the time served is not less than 85 percent. Likewise, if the average time served by offenders convicted of aggravated assault is less than 85 percent of the sentence imposed, but the actual time served for one or more of the other Part 1 violent crimes exceeds 85 percent, the State may still qualify for funds.

It should be noted that the average will be applied to time served by **individuals** sentenced to prison for Part 1 violent crimes. Therefore, if the average time served for an offense for which a large number of individuals are sentenced to prison is less than 85 percent, the overall average may drop below 85 percent even though the average time served is higher for one or more other crimes for which fewer offenders are sentenced to prison.

D.14 QUESTION: What happens if a State qualifies for Truth-in-Sentencing under the eligibility requirement that persons convicted of a Part 1 violent crime serve *"on average"* not less than 85 percent of the sentence imposed (i.e., the second criteria for determinate sentencing States or either criteria for indeterminate sentencing States), and then the average drops below 85 percent for 1 year?

ANSWER: If the average sentence served falls below 85 percent, the State will be ineligible for Truth-in-Sentencing funding for each year that it does not meet the eligibility criteria.

D.15 QUESTION: The statute defines an indeterminate sentencing State as a State that on April 26, 1996—the date of the enactment of the Department of Justice's FY 1996 appropriation which amended the VOI/TIS statute—practiced indeterminate sentencing with regard to any Part 1 violent crime. Can an indeterminate sentencing State that could not meet the Truth-in-Sentencing eligibility criteria on that date establish or amend its laws, policies, or sentencing and release guidelines to qualify for funds in subsequent years?

ANSWER: No. Subsection (a)(3) of the statute sets out a two prong test for an indeterminate sentencing State to qualify for a Truth-in-Sentencing incentive award. A State is required to demonstrate compliance with both prongs of the test as of the date of enactment of the amendment. First, the State must show that it practiced indeterminate sentencing on April 26, 1996, the date that the VOI/TIS statute was amended. The second prong requires the State to also demonstrate that it qualified for Truth-in-Sentencing under one of the two criteria available to indeterminate sentencing States at that time.

D.16 QUESTION: Can a determinate sentencing State that changes its sentencing laws to indeterminate sentencing continue to qualify for funding?

ANSWER: No. The statute defines an indeterminate State as a State that, on April 26, 1996—the date of the enactment of the Department of Justice's FY 1996 appropriation—practiced indeterminate sentencing with regard to ***any*** Part 1 violent crime.

D.17 QUESTION: Can an indeterminate sentencing State that changes its sentencing laws to determinate sentencing continue to qualify for funding?

ANSWER: Yes, as long as it meets the eligibility criteria.

D.18 QUESTION: If the courts in an indeterminate sentencing State impose both a minimum and a maximum sentence, which sentence is used for computing the 85 percent?

ANSWER: If a court sentences within a range prescribed by law and the release decision is made by a parole authority **without the use of State sentencing and release guidelines** as described above, the State must use the maximum sentence imposed as the basis for computing the 85 percent actual time served.

However, the actual time served may be established by a court or by a parole authority if a State can demonstrate that:

It has enacted and implemented sentencing and release guidelines.

The guidelines are utilized by both the sentencing judge and the parole authorities.

The guidelines serve as an aid in setting a prison term.

The Part 1 violent offenders serve on average not less than 85 percent of the prison term.

D.19 QUESTION: If a State imposes mandatory minimum sentences for Part 1 violent crimes but does not utilize sentencing and release guidelines, can the mandatory minimum be used as the basis for measuring the actual time served?

ANSWER: No.

D.20 QUESTION: A State may qualify for Truth-in-Sentencing funds if it can demonstrate that "the State has enacted, but not yet implemented, Truth-in-Sentencing laws that require the State, not later than 3 years after it submits its application for funds, to provide that persons convicted of a Part 1 violent crime serve not less than 85 percent of the sentence imposed." If a State recently passed such legislation, it may have difficulty showing a significant impact in the 3 years outlined in the Federal act.

ANSWER: The provision cited in the question requires that States begin to implement their Truth-in-Sentencing legislation within 3 years, not show an impact within that 3-year period.

D.21 QUESTION: If State law provides for life sentences that allow a person to be released after serving a specified period of time (e.g., 20 years), can the State still qualify for Truth-in-Sentencing funds, and if so, how is "life" handled for purposes of the 85 percent standard?

ANSWER: If the State statutorily defines a specific term of years for a life sentence, the State could still qualify for funds if it can demonstrate that offenders with such sentences serve not less than 85 percent of the number of years specified by law.

D. 22 QUESTION: What if a State allows a very small number of releases of offenders serving life sentences but does not statutorily define a specific term for a life sentence (e.g. sets a range of 20 years to life, allows for sentences to be commuted upon recommendation of a parole authority, the judge sets a minimum term to be served, or some other method of release). If the State meets the Truth-in-Sentencing requirements for other Part 1 violent offenders, can it qualify for

grant funds?

ANSWER: States that have met the intent of Congress through the implementation of Truth-in-Sentencing may qualify for funding even though a very small number of offenders sentenced to life terms may be released. Experience shows that States that have implemented Truth-in-Sentencing do not release persons with life sentences without careful review of the circumstances of each case. Therefore, it would not appear to be in keeping with congressional intent to disallow States that have made strides in implementing Truth-in-Sentencing solely on the grounds that they cannot prove that offenders are serving 85 percent of an undefined life sentence. States with an undefined life sentence should describe in their application how exceptions to life sentences are handled.

D.23 QUESTION: If a State's legislature is currently considering Truth-in-Sentencing legislation that meets the requirements of the program, will the State's allocation be held until the legislation is passed?

ANSWER: No. This program does not provide for allocations to all States. The total available funds are distributed to the States that can demonstrate in their application submitted by the due date that they meet the program requirements. No funds can be distributed until all eligible States have been determined. Therefore, it is not possible to hold funds to see if additional States come into compliance. If a State passes qualifying legislation, it can apply for Truth-in-Sentencing funds in subsequent years, assuming funds are appropriated by Congress to continue the program.

D.24 QUESTION: Can an indeterminate sentencing State that qualified for Truth-in-Sentencing in a prior year, make changes to its sentencing law or guidelines and continue to be eligible for funds?

ANSWER: A State which qualifies for Truth-in-Sentencing and then later enhances its existing qualifying laws or sentencing and release guidelines by increasing the amount of time served above the statutory requirements or including more offenses is not disqualified because of such amendments.

E. Exception for Geriatric Prisoners and/or Prisoners With Medical Conditions

E.1 QUESTION: What is a geriatric prisoner?

ANSWER: There is no statutorily defined or generally accepted definition of a "geriatric prisoner" or "geriatric." Each State should define who is a geriatric prisoner and should establish criteria and guidelines for the release of such prisoners.

E.2 QUESTION: Is the same type of public hearing that is required for a prisoner with a medical

condition also required prior to the release of a geriatric prisoner?

ANSWER: No.

E.3 QUESTION: Are there criteria or guidelines for the release of prisoners with medical conditions?

ANSWER: The State should establish criteria and guidelines for determining that a prisoner's medical condition is such that he or she no longer poses a threat to the public.

E.4 QUESTION: What type of public hearing must be held prior to releasing a prisoner for medical reasons and who must be invited?

ANSWER: Each State should establish procedures for these public hearings. At a minimum the victim and/or his or her family as well as affected members of the public should be notified of the hearing and provided an opportunity to be heard regarding the proposed release.

F. Allowable Uses of Funds

F.1 QUESTION: Funds can be used to build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted nonviolent offenders and criminal aliens to free existing prison space for the confinement of persons convicted of a Part 1 violent crime. Does "build or expand" include the acquisition and/or repair of these facilities?

ANSWER: The State may use grant funds (Federal and match) to acquire an existing building or structure to increase bed space for violent offenders. The grant funds may not be used to purchase land, including the land that an existing structure sits on or land that will be used to build a new facility. Initial repairs to make a newly acquired facility ready for use as a correctional facility are allowable expenses whereas on-going repairs and maintenance are not.

F.2 QUESTION: Can grant funds be used to increase the security level of an existing facility, or for facility upgrades?

ANSWER: Yes. Grant funds may be used to increase the security level of a facility (e.g., from medium to maximum security) ***if*** the purpose is to make additional beds available for violent offenders.

F.3 QUESTION: Can the funds be used to build and expand juvenile facilities?

ANSWER: Yes. However, prior to using funds for facilities for non-violent juvenile offenders,

the State must declare exigent circumstances indicating a need for such facilities. See Section L: Juvenile Facilities for more information on this subject.

F.4 QUESTION: If funds are used to build or expand local jails, do they need to be used to increase bed capacity for violent offenders?

ANSWER: No. These funds are available to ease the burden placed on local jails resulting from the State's efforts to incarcerate more violent offenders and/or implement Truth-in-Sentencing, which may result in nonviolent offenders, previously sentenced to prison, serving their sentence in a local jail.

F.5 QUESTION: Do correctional facilities include community-based facilities for purposes of grant funding?

ANSWER: Yes. Grant funds may be used to build or expand a residential community-based facility, such as a transitional program for violent offenders or a community corrections facility which frees conventional space for violent offenders.

F.6 QUESTION: Can grant funds be used to build or expand a Reception and Diagnostic Center?

ANSWER: Yes, as long as the State can demonstrate that the center will expand or free bed space for violent offenders.

F.7 QUESTION: Can grant funds be used to build or expand an infirmary for long-term care or terminally ill inmates?

ANSWER: Yes, as long as the infirmary will be used as a permanent placement for inmates and the State can demonstrate that the center will expand or free bed space for violent offenders. The grant funds could not be used to build or expand an infirmary which is used for sick call or short-term stays, unless it is part of a total construction project to add or free beds for violent offenders.

F.8 QUESTION: Can grant funds be used to lease a building from a county that will then be operated by the State?

ANSWER: Yes. Grant funds may be used to enter into a long-term lease or a lease purchase arrangement to obtain a building from another unit of government or from the private sector that will be operated by the State to expand capacity for violent offenders. Such expenses can be considered capital expenses. However, short-term leases would be considered operating expenses, which cannot be paid with grant funds. [**Note:** For information on leasing bed space which includes operating costs, see Section M - Private Facilities.]

F.9 QUESTION: Can grant funds be used to add beds in an administrative segregation unit intended to house offenders who are violent, those with behavioral problems, or those who will not follow the rules?

ANSWER: It depends on how the beds will be used. The grant funds could be used if the segregation unit beds will provide long-term segregation of violent inmates, thus increasing the overall capacity of the facility. If, however, the segregation unit is used for short-term disciplinary actions and the inmates return to their permanent bed space following release from the unit, grant funds could not be used because there is not an overall increase in bed space.

F.10 QUESTION: Can grant funds be used to pay debt service costs associated with the construction of a grant-supported facility?

ANSWER: No. The grant funds may not be used to pay interest costs associated with financing the construction of a grant-supported facility, but could be used to pay off the principal.

F.11 QUESTION: If a State is planning to issue bonds to raise funds for the State portion of a grant-supported construction project, can grant funds be used to pay bond counsel and financial advisor costs related to the issuance of the bonds?

ANSWER: No. The grant funds may not be used for any costs associated with the financing of the project.

F.12 QUESTION: Can grant funds be used to purchase furnishings for the facility such as tables and chairs for the dining hall or beds for the cells?

ANSWER: No. Furnishings and equipment that are not intended to be part of the structure may not be purchased with grant funds. However, the definition of construction provided in the Program Guidance and Application Kit includes "the acquisition or installation of fixed furnishings and equipment" for a grant supported project. Therefore, furnishings and equipment which are built in or bolted down so as to be part of the structure are allowable costs.

F.13 QUESTION: If a State plans to use inmate labor to construct a new facility, can grant funds be used to pay for costs of personnel, such as correctional officers, construction supervisors, or site security staff needed to oversee the inmate labor?

ANSWER: The grant funds may be used to pay for **additional** correctional or contract personnel required to train, supervise, and/or guard the inmates and to secure the site during the construction process. Grant funds may also be used for overtime costs which have been justified as reasonable and necessary. The grant funds may not be used to

supplant State or local funds which would have been available to pay existing personnel assigned to these activities, work crews that would have been available to work on the construction project, etc.

F.14 QUESTION: Can grant funds be used for the wages paid to the inmates while working on the construction project?

ANSWER: Yes, but only to the extent that the wages exceed those which would have been paid by the State had the inmate not been assigned to this project.

F.15 QUESTION: Is the purchase of construction tools, such as hammers, saws, and paint brushes, an allowable cost when inmate labor is used?

ANSWER: Yes, if inmate labor will be used in the construction process, grant funds may be used for expendable property and supplies, such as small tools, that are needed to perform the construction activities. Capitalized equipment, as defined by the State's procurement procedures, may be leased but not purchased with grant funds.

F.16 QUESTION: May grant funds be used to pay for water and sewer lines?

ANSWER: Yes. Bringing in new or expanding existing water and sewer lines to accommodate a new or expanded facility is an allowable cost. However, upgrading such lines in an existing facility that is not being expanded to add beds is considered maintenance and is not allowed.

F.17 QUESTION: May grant funds be used to upgrade or expand support services or make infrastructure improvements in an existing facility that are needed to expand the capacity of the facility?

ANSWER: Grant funds may be used for this purpose, if the upgrades will result in permanent beds that increase space for violent offenders. However, this would not be an allowable use of funds if it results in more offenders being temporarily housed in overcrowded conditions.

F.18 QUESTION: If a local community requires that the State pay for the expansion of the local water or sewer treatment plant to accommodate the new grant-supported correctional facility, can these costs be paid with grant funds?

ANSWER: No. The purpose of the grant funds is to increase space for violent offenders. Since the State is responsible for site selection, costs associated with the selected site that

are not directly related to the construction of the correctional facility are also a State responsibility and may not be paid with grant funds.

F.19 QUESTION: Can grant funds be used to pay for road construction or improvement associated with the construction or expansion of a correctional facility?

ANSWER: Yes. The grant funds may be used to build or expand an access road to the correctional facility site. However, costs associated with building or upgrading an existing public road (e.g., to add a new highway interchange) may not be paid with grant funds. Since the State is responsible for site selection, costs associated with the selected site that are not directly related to the construction of the correctional facility are also a State responsibility and may not be paid with grant funds.

F.20 QUESTION: If State law requires the Department of Corrections to provide a payment to the local jurisdiction where a new grant-supported correctional facility will be housed to mitigate the impact on community services, such as the schools and fire and police services, can grant funds be used to pay the mitigation costs?

ANSWER: No. These are not construction costs.

F.21 QUESTION: If a Department of Corrections, through law or policy, normally sets aside a portion of the funds available to construct a facility for maintenance to ensure that the facility is maintained in the future, can a portion of the grant funds be set-aside for this purpose?

ANSWER: No. Maintenance costs are considered operating costs and cannot be paid with grant funds.

F.22 QUESTION: Can grant funds be used to upgrade or replace a boiler, kitchen, water or sewer lines, etc. on an existing facility if it will ensure that the facility will remain open to continue to provide space for violent offenders?

ANSWER: No. These types of costs are maintenance or operating costs and do not increase bed space for violent offenders. Therefore, this would not be an allowable use of grant funds. The only time that such expenditure of grant funds would be allowed is when the upgrades to the infrastructure or service areas are needed to increase or free bed space for violent offenders. For example, if beds are being added to a facility and the kitchen would need to be expanded to prepare meals for the additional inmates, the expansion of the kitchen facilities which is directly related to the new beds would be an allowable expense.

F.23 QUESTION: If a State has appropriated funds to construct a new correctional facility, could the grant funds be used to build or expand space for programs, such as classroom space or a shop that will be used for on-the-job training?

ANSWER: No. The grant funds must be used to build or expand space for violent offenders or for nonviolent offenders to free space for violent offenders. They could be used to build or expand program space if it is part of an overall project to expand the number of beds in an existing or planned facility, but cannot be used to simply upgrade the services in such a facility.

F.24 QUESTION: If State law requires that the Department of Corrections set-aside a percentage of its construction funds to support the arts, can the required set-aside be made with grant funds?

ANSWER: No. The set-aside would also **not** qualify as match for the project.

F.25 QUESTION: Can a State use grant funds for costs associated with complying with State or local environmental or zoning requirements related to a grant-supported construction or renovation project?

ANSWER: Yes.

*** F.26 QUESTION: Can VOI/TIS funds be used for a capacity study of a State's corrections system to include projections of bed space needs, an analysis of existing physical structures, operational and architectural programming for each custody level and facility type, recommendations for siting new construction, and cost projections as a preliminary step in developing a capital improvement program?**

ANSWER: Yes. The definition of construction provided in the Program Guidance and Application Kit includes facility planning, prearchitectural programming, and architectural design. The study described above is focused on capital improvement and falls within this definition. Therefore, the costs of the study could be paid with VOI/TIS funds.

However, a corrections masterplan or study that explores such issues as: the development of community-based alternatives even if they will free up space for violent offenders, establishment of sentencing guidelines, and/or restructuring of the inmate classification system, goes beyond the allowable focus on capital improvement. Likewise, the establishment of a data collection or an automated information system to provide data for the study or to do on-going prison population projects would not be allowed.

*** F.27 QUESTION: Can the grant funds be used to renovate a leased facility?**

Maybe. VOI/TIS funds may be used to renovate a leased building for use as a correctional facility, as long as the State has an option to purchase the facility or has a long-term lease through the useful life of the renovations.

*** F.28 QUESTION: Can a State with a unified corrections system (combined prison/jail system) use VOI/TIS funds to add beds to a jail that holds sentenced adult offenders as well as pretrial detainees?**

ANSWER: Yes. The third purpose defined by statute for which the grant funds may be used is to "build or expand jails." Jails generally house both pretrial and sentenced offenders. If the jail was to be operated by the county or other unit of local government, as is the case with jails in most States, the grant funds that could be used for this purpose would be subject to the 15 percent limit on the sharing of funds with local governments.

*** F.29 QUESTION: Can a State use VOI/TIS funds to renovate a facility leased from a local jurisdiction so that the space can be used as a treatment unit?**

ANSWER: Yes. VOI/TIS funds may be used to renovate a facility leased from another public or a private entity as long as the lease is long-term and will extend through the useful life of the renovations and the project increases or frees bed space for violent offenders. If the Department of Corrections will operate the facility, the VOI/TIS funds may be used to lease square footage space from a public or a private entity since a lease arrangement is one method of expanding space for violent offenders. Lease agreements that include operations may be entered into only with private entities, under the privatization provisions of the VOI/TIS statute.

*** F.30 QUESTION: Can VOI/TIS funds be used to build a fully secured institution for both 1) juveniles adjudicated delinquent for an act which, if committed by an adult, would be a Part 1 violent crime and for 2) youth adjudicated for nonviolent but serious offenses?**

ANSWER: Yes, if the State declares exigent circumstances. The VOI/TIS funds may be used to build or expand juvenile corrections facilities to increase or free up space for the juvenile delinquents adjudicated for violent offenses. The State may also use the VOI/TIS funds for a facility for nonviolent offenders if the State certifies that exigent circumstances exist that require the State to expend funds to build or expand facilities to confine juvenile offenders for other than Part 1 violent offenses.

*** F.31 QUESTION: Can a State use VOI/TIS funds to lease beds from a private provider for a treatment program if these are secure beds for serious offenders and their**

placement would free secure State beds for Part 1 violent offenders?

ANSWER: Yes. The State may lease beds from a private entity for Part 1 violent offenders or to free up space for violent offenders. The lease arrangement may include the operating and program costs associated with the housing of offenders in these leased beds. However, since the purpose of the VOI/TIS program is to expand prison beds for Part 1 violent offenders, the State should consider whether leasing a relatively small number of beds in a high cost specialized program is the best way to meet the State's demand for additional space for Part 1 violent offenders.

***F.32 QUESTION: Can a State use VOI/TIS funds to build additional beds at a State-owned medical or mental hospital to increase the number of secure beds in the hospital for the placement of ill inmates?**

ANSWER: Maybe. The State would need to show that the hospital unit will meet the statutory purposes of the VOI/TIS funds -- to increase or free up bed space for Part 1 violent offenders. A hospital unit that holds inmates for short-term stays would not free up beds for Part 1 violent offenders and would not qualify for grant funding. If an inmate's bed in the institution is held open until he/she returns from the hospital the unit is not expanding bed space for Part 1 violent offenders. Grant funds could be used to convert space for a hospital unit that will provide long-term care for inmates.

*** F.33 QUESTION: Can a State Department of Corrections use VOI/TIS funds to purchase a modular unit that will be assembled next to a housing unit to provide space for treatment and education?**

ANSWER: No. The modular unit will add program space for the treatment program, but will not increase or free up bed space for Part 1 violent offenders.

*** F.34 QUESTION: Can a State use VOI/TIS grant funds to expand an existing correctional facility to increase its total bed capacity for violent offenders and to add program and office space to include classrooms, arts and crafts area, visitation area, and staff offices?**

ANSWER: Yes. A facility built or expanded with VOI/TIS funds may include all necessary program and administrative space. Likewise, VOI/TIS funds may be used to add program and administrative space to an existing facility if it is part of a larger project to expand or free up bed space for Part 1 violent offenders. However, the grant funds could **not** be used to add such space to an existing facility that was not part of a larger facility expansion to increase bed space.

*** F.35 QUESTION: Can the State Department of Corrections use VOI/TIS funds to construct a health care unit and an administrative segregation unit for an existing prison complex?**

ANSWER: Maybe. The VOI/TIS funds may not be used to construct a health care unit and an

administrative segregation unit if these facilities will be used for short-term placement of offenders while their cell space is held open for their return. In this case, these facilities would not result in an increase in bed space. However, the grant funds could be used for this purpose if the facilities are to be used for long-term placement of violent offenders or the bed spaces of the offenders placed in these units are then used to increase or free up space for Part 1 violent offenders. The State would also have to show that these beds will generally be full—not empty awaiting inmates to become ill or to be assigned to segregation.

*** F.36 QUESTION: If the State Legislature has appropriated funds to build a new prison for Part 1 violent offenders, can the Department of Corrections use the VOI/TIS funds to add program and job training space to this facility?**

ANSWER: No. The VOI/TIS funds may not be used to add program or job training space to an existing facility or one under construction with State funds. The grant funds must be used to increase or free up space for Part 1 violent offenders. However, program and job training space may be included in a facility that is constructed with grant funds.

*** F.37 QUESTION: Can the Department of Corrections use VOI/TIS funds to purchase the fixtures, furnishings, and equipment for a prison currently being built with State funds?**

ANSWER: No. The grant funds may not be used to purchase fixtures, furnishings, and equipment because these expenditures will not result in an increase in space for Part 1 violent offenders in a facility being built the State funds.

However, if a facility is built or expanded with grant funds, the cost of fixed fixtures, furnishings, and equipment are allowable costs. Fixed furnishings and equipment are those items which are built-in or attached to the structure, so as to become a part of the building. Moveable furnishings and equipment may not be purchased with grant funds. Built in kitchen equipment, dinning tables and chairs that are bolted to the floor, and other built in fixtures, furnishings, and equipment could be purchased and installed with grant funds.

*** F.38 QUESTION: Can grant funds be used for facility improvements such as parking, lighting, guard towers, and utilities?**

ANSWER: Maybe. The VOI/TIS grant funds may be used to pay for facility upgrades as long as these improvements are part of a VOI/TIS funded new or expanded facility that results in additional beds or frees up space for violent offenders. Grants funds could **not** be used to make these improvements when capacity is not expanded.

*** F.39 QUESTION: Can grant funds be used to install permanent and fixed telecommunications systems including conduit and wiring for intercoms, surveillance cameras, radio towers and telephone and data lines to ensure security of the facility?**

ANSWER: Maybe. The VOI/TIS grant funds may be used to pay for such security upgrades as long as these improvements are part of a new or expanded facility that results in additional beds or frees up space for violent offenders. Grants funds could also be used to make security improvements to an existing facility if the upgrades result in an increase in bed space for violent offenders (i.e., enhancing the security of a facility used for non-violent offenders so that it can be used for violent offenders).

*** F.40 QUESTION: Can the State use VOI/TIS funds to comply with the drug testing guidelines?**

ANSWER: Yes. Based on a change in the statutory language, beginning in FY 1999, up to 10 percent of a State's VOI/TIS award for the year may be applied to the cost of offender drug testing and intervention programs during periods of incarceration and post-incarceration criminal justice supervision and/or providing the baseline report on its prison drug abuse problem. *(See Section I of this document for more information on the use of VOI/TIS funds for this purpose.)*

G. Demonstrated Ability To Operate Facilities

G.1 QUESTION: Since State and local governments approve budgets for 1 year at a time, how can a State demonstrate its ability to operate facilities built or expanded with grant funds?

ANSWER: The Governor is required to certify that it is the intention of the State to complete and operate facilities built with grant funds.

G.2 QUESTION: What happens if by the time a new facility is built and ready to open, which may be at least 3 to 5 years from now, the circumstances in the State have changed and the State cannot honor its commitment to operate the facility?

ANSWER: The Office of Justice Programs will review the circumstances and determine if the State acted in good faith when it accepted the Federal funds. Future awards could be withheld and/or the State could be required to return funds if the Office of Justice Programs' determination on review is unfavorable.

H. Recognition of the Rights and Needs of Crime Victims

H.1 QUESTION: If a State currently recognizes the rights of crime victims but does not meet the Federal standards, is the State required to change its policies?

ANSWER: No. If a State has policies that are generally comparable to those at the Federal level, the State is not required to change its policies. If a State did not have policies that recognize the rights and needs of crime victims, or its existing policies afforded crime victims only minimal rights, it was required to implement new policies by October 26, 1997. All States are strongly encouraged to adopt policies that are comparable to or exceed those applied in Federal proceedings.

I. Drug Testing, Interventions, and Sanctions Program

**** I.1 QUESTION: What must a State do to comply with the drug testing requirement?**

ANSWER: Language attached to the FY 1997 appropriation for the VOI/TIS program required States **to have implemented** a program of controlled substance testing, sanctioning, and intervention by September 1, 1998. All States were in compliance with this requirement by the September 1 deadline. Notwithstanding a change to the statutory language attached to the FY 1999 appropriation that extended the deadline for compliance and makes compliance voluntary, the drug testing guidelines issued by Attorney General remain unchanged

I.2 QUESTION: Who must be tested?

ANSWER: The target population to be tested includes appropriate adult offenders, male and female, while they are incarcerated in State prisons and following release into the community while they continue to be under the custody or supervision of the State.

I.3 QUESTION: Does this mean that every offender in a State prison or on parole must be tested?

ANSWER: No. The scope of the drug testing program, the types of interventions, and the range of sanctions will be defined by each State. At a minimum, the program must include targeted and random testing and testing of offenders while in treatment. The program must also include appropriate interventions and/or graduated sanctions that include denial or revocation of release in appropriate circumstances.

I.4 QUESTION: Does this provision require that all parolees or other offenders in a community-based program who test positive for drugs be sent back to prison?

ANSWER: No. There should be a response to each positive test. However, the State should develop a range of interventions and sanctions that can be used to provide an

appropriate response to different circumstances. The program may include such interventions as drug education, group counseling, cognitive restructuring, a therapeutic community, coerced abstinence, etc., and sanctions such as a written warning, counseling, increased surveillance and testing, intensified reporting requirements, curfew, a day reporting center, house arrest, electronic monitoring, short-term detention, or return to secure confinement. Denial or revocation of release need not be the first course of action but must be an option to be applied in appropriate circumstances.

I.5 QUESTION: If a State currently has a comprehensive program of drug testing, is it required by this provision to do more?

ANSWER: Not necessarily. If a State has a comprehensive program of drug testing that includes prison inmates, community supervision, and parolees and there is an appropriate response (intervention and/or sanction) for each positive test, the State may meet the requirement by submitting clearly articulated policies and procedures that define the program.

**** I.6 QUESTION: Can the VOI/TIS grant funds be used to implement drug testing, provide treatment, and develop graduated sanctions?**

ANSWER: Yes. Beginning in FY 1999, States may use up to 10 percent of their annual VOI/TIS award for the cost of offender drug testing and intervention programs during periods of incarceration and post-incarceration criminal justice supervision and for costs related to providing the required baseline report of in-prison drug use.

*** I.7 QUESTION: Can a State use a portion of the 10 percent funds to interdict and suppress the flow of drugs in its prisons?**

ANSWER: Yes, as long as drug interdiction and suppression is a part of the State's approved drug testing, sanctions, and intervention policy and procedures.

*** I.8 QUESTION: Since the VOI/TIS funds are awarded each year as a supplement to the original FY 1996 award resulting in a single grant, can a State use up to 10 percent of its entire grant to implement its drug testing, sanctions, and intervention policy?**

ANSWER: No. The State must track the amount of funds received from the Federal FY 1999 and subsequent appropriations and use no more than 10 percent of that amount for implementation of its policy.

I.9 QUESTION: If a State is using all or most of its funds for juvenile and/or local facilities, do the drug testing requirements also apply to juveniles and local jail inmates?

ANSWER: No. Although States are encouraged to implement drug testing, sanctions, and

treatment for appropriate offenders throughout their criminal justice system, these drug testing requirements apply only to adult offenders while they are incarcerated in State prisons and following release into the community while they continue to be under the custody or supervision of the State.

*** I.10 QUESTION: Can a State use the 10 percent of the VOI/TIS funds available for offender drug testing and intervention programs for such programs in juvenile and/or local jail facilities?**

ANSWER: No. Up to 10 percent of the VOI/TIS funds may be "applied to the cost of offender drug testing and intervention programs during periods of incarceration and post-incarceration criminal justice supervision, consistent with guidelines issued by the Attorney General." Since the guideline requirements do not extend to juvenile and local agencies, the funds may not be used to implement testing and intervention programs operated by these agencies.

I.11 QUESTION: If the Governor has designated the juvenile correctional agency as the administrative agency for the program and none of the funds will be used for adult correctional facilities, how can the juvenile agency be expected to ensure that the adult system meets the drug testing requirement?

ANSWER: Just as the eligibility for the funds is based on laws and practices related to adult violent offenders, the drug testing requirements apply to adult offenders, regardless of the type of facilities (adult or juvenile) that will be built with the grant funds. Since the decisions regarding the administration and use of the funds are made by the Governor, responsibility for ensuring that all requirements are met to qualify for the funds, including meeting the drug testing requirements, reside with the Governor or his/her designee.

I.12 QUESTION: Which drugs are the States required to test for?

ANSWER: The drug tests should screen for several drugs that are most commonly used by the population being tested. This is a State decision since specific drugs are more prevalent in different parts of the country.

I.13 QUESTION: Are States required to test offenders for alcohol, as well as other drugs?

ANSWER: Although alcohol is not a "controlled substance" as defined by the Controlled Substance Act, use of alcohol is often a more serious problem in correctional settings than other drugs. Therefore, States are encouraged to include alcohol in their program of drug testing, sanctions, and treatment.

I.14 QUESTION: Is a State required to treat every offender who tests positive for drugs?

ANSWER: There should be a response to every positive test. The response could include one or

more available sanctions or treatment options. Treatment responses should be appropriate to the offender's substance abuse problems and his or her time until release (e.g., intensive treatment programs have been shown to be most effective for offenders who are close to release so that the program is followed by aftercare in the community).

I.15 QUESTION: Must there be a connection between institutional testing and treatment programs and community programs?

ANSWER: Research has shown that aftercare in the community is an important part of any treatment program. However, there may be instances when it is not appropriate or resources are not available to provide a direct relationship between institutional and community programs.

I.16 QUESTION: Is there a minimum number of tests that are required?

ANSWER: No. The State's testing program must include some random testing, some targeted testing, and testing of offenders while in treatment. All adult offenders in State correctional institutions and under supervision following release must be subject to all three types of testing. The State's policy and procedures should specify which offenders will be tested and how often, based on the extent of drug use within its institutions and among post-release offenders under correctional supervision, current policies and practices, and available resources.

I.17 QUESTION: Are States required to define the sanctions that will be imposed for positive drug tests?

ANSWER: Yes. A State's drug testing, sanctions, and treatment policy should require that offenders be held accountable for their behavior by providing a response (a sanction and/or treatment intervention) to each positive test. The policy and procedures should define a range of escalating sanctions and how they will be applied.

I.18 QUESTION: Is there a presumed level of sanctions that must be imposed?

ANSWER: No. A State's policy and procedures should define a range of escalating sanctions for continued drug use and how these will be applied. The available sanctions can include a whole range of responses including, but not limited to: an oral or written warning/reprimand; a writing assignment; individual, group, or clinical counseling; restriction or loss of privileges or activities; increased reporting; extra duty or work

detail; community service; drug education or treatment program; more frequent drug testing; intensive supervision; house arrest; curfew; electronic monitoring; fines; increased security or supervision; and return to prison. The available sanctions must include denial or revocation of release in appropriate circumstances.

I.19 QUESTION: Is there a limit to the number of positive tests before an offender must be returned to prison?

ANSWER: No. Each State must define in its policy and procedures the range of sanctions that are available and how they will be applied. The sanctions for each subsequent positive test should be more severe than the previous and should eventually result in a denial or revocation of release.

I.20 QUESTION: If a State has a written policy and procedures which addresses testing, sanctions, and treatment on September 1, 1998, is that sufficient to comply with the drug testing requirement?

ANSWER: No. The State must have fully implemented its policy and procedures by that date, (i.e., the State must have begun to test, sanction, and treat offenders, as specified in the policy and procedures). However, there is no required number of tests that must have been completed by September 1, 1998.

I.21 QUESTION: Does the drug testing requirement extend to persons who are sentenced to a period of incarceration followed by a period of probation or a combination of probation and parole?

ANSWER: Yes. The target population is appropriate adult offenders while incarcerated in State prisons and following release into the community while they continue to be under the custody or supervision of the State. The post-release supervision of an offender may be the responsibility of a parole agency, probation agency, or any other agency designated by the State to perform this function.

*** I.22 QUESTION: Do the drug testing requirements extend to parolees who are transferred to the supervision of another State under an interstate compact?**

ANSWER: No. If they are being supervised by the parole agency in another State, it is presumed that they will be subject to the policies of that State.

*** I.23 QUESTION: Can a State that has an approved drug testing policy change some of the elements of the policy?**

ANSWER: Yes, as long as the State still complies with all required elements of the guidelines. Changes to required elements of the drug testing requirements must be submitted to the CPO grant manager, with a description of the change and reason for it. A State

may also add new initiatives to its approved policy and procedures, consistent with the drug testing guidelines and use VOI/TIS funds under the 10 percent provision to implement these initiatives. (Note: A State may expend up to 10 percent only on approved Drug Testing Guideline components.)

J. Inmate Death Reporting

J.1 QUESTION: What must a State do to comply with the inmate death reporting requirement?

ANSWER: Since 1997, all States have been required to provide the requested information on inmate deaths to the Bureau of Justice Statistics through the Census of State and Federal Adult Correctional Facilities. The census collects aggregate data on prison inmate deaths from illnesses/natural causes (excluding AIDS), AIDS, suicides, accidental injury to self, death caused by another person, executions, and "unspecified causes."

J.2 QUESTION: What if a State does not collect the required information and is unable to complete the census?

ANSWER: The State is encouraged to provide the best possible data.

K. Sharing Funds With Units of Local Government

K.1 QUESTION: The Program Guidance and Application Kit states that each State should reserve up to 15 percent of its formula grant award in a fiscal year for counties and other units of local government. How is the amount to be passed through to local governments determined?

ANSWER: The State will determine how much to pass through to local governments. In making the decision, the State is required to consider the burden placed on a county or unit of local government that results from implementation of policies adopted by the State to implement the Violent Offender Incarceration and Truth-in-Sentencing Program. For example, if local jails are required to hold State prisoners because of prison overcrowding due to the increase in the number of violent offenders, longer sentences, or more nonviolent offenders sentenced to local jails to free prison beds for violent offenders, the State should share a portion of the grant funds with local governments.

K.2 QUESTION: If the use of the grant funds to construct beds for violent offenders at the State level will relieve the burden on local jurisdictions, can the State spend the entire grant award for construction at the State level?

ANSWER: Yes. The statute requires each State to reserve **up to 15 percent** for counties and other units of local government. The 15 percent is the maximum amount that can be awarded to local governments, with one exception as described below. There is no statutory minimum. The amount to be reserved for local governments is a State decision. States are encouraged to make this decision in consultation with or based on input from local jurisdictions. If the State determines that the implementation of the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program will not impact local governments or that the burden can be reduced more effectively by expanding capacity at the State level, the State may use the entire award for State-level projects.

Exception to 15 Percent Limit: If a State declares exigent circumstances requiring the State to expend funds to build or expand facilities to confine juvenile offenders other than juveniles offenders adjudicated delinquent for an act which, if committed by an adult, would be a part 1 violent crime, any amount of the State's total award may be used to build or expand local correctional facilities, including pretrial detention centers and boot camps, for such **nonviolent** juvenile offenders. For a more complete description of funds for juvenile facilities, see Section L.

K.3 QUESTION: Who makes the decision on how much to pass through to local governments, and how do local jurisdictions influence it?

ANSWER: Each State will establish its own procedures to make funding decisions. Units of local government should contact the State administrative office to find out what procedures have been established in their State and how to provide input into the process.

K.4 QUESTION: Must a local jurisdiction experience an impact from the State's efforts to incarcerate violent offenders and/or implement Truth-in-Sentencing in order to receive grant funds?

ANSWER: Yes. Impact may include the backup of State prisoners in local jails due to prison overcrowding, changes in law that require that certain offenders (usually with shorter sentences) be sentenced to jail rather than prison, or a requirement that local jurisdictions develop alternatives to incarceration. If there is no impact on local facilities, local jurisdictions are not eligible for funding. Impact means the burden placed on the county or unit of local government as a result of policies adopted by the State to implement this program.

K.5 QUESTION: What are the purposes for which funds awarded to local jurisdictions can be used?

ANSWER: Grant funds subawarded to counties and other units of local government may be used to construct, develop, expand, modify, or improve jails and other correctional facilities.

K.6 **QUESTION: Can grant funds be used to build or expand locally operated community-based facilities, such as work release or community corrections?**

ANSWER: Yes, as long as the funds used for local facilities are used to construct, develop, expand, modify, or improve facilities and do not exceed 15 percent of the total State award.

*** K.7** **QUESTION: If a State used its entire VOI/TIS award for FY 1996 and 1997 to construct a new State prison, could it exceed the 15 percent limit on its FY 1998 award by making funds available to local units of government in an amount equal to 15 percent of the total funds received for FY 1996-98?**

ANSWER: Yes. The VOI/TIS statute allows States to make up to 15 percent of their formula grant funds available to units of local government. Each new VOI/TIS award made to the State is made as a supplement to the original award, resulting in a single grant. Therefore, the State may make subawards to units of local government that total up to 15 percent of all of the funds received by the State on the date that the subawards are made.

*** K.8** **QUESTION: Is a State, that plans to make an award to a unit of local government required to obtain approval from OJP/CPO prior to making the award?**

ANSWER: No. However, the State should provide a certification, prior to project initiation, that indicates that there is an impact on a local jail from the State's efforts to implement the VOI/TIS Program.

*** K.9** **QUESTION: Can grant funds be used to improve a local jail facility even if the project will not result in an increase in bed space?**

ANSWER: Yes. Grant funds may be used by units of local government to make improvements to the jail structure that are needed to upgrade the facility to respond to the burden placed on the facility due to the State's implementation of the VOI/TIS Program, which may include such things as upgrading security, improving infrastructure, and/or adding program space to hold more offenders, more violent offenders, or offenders for longer periods of time. The grant funds may not be used for furnishings unless they are fixed furnishings which become a part of the jail structure.

*** K.10** **QUESTION: Can grant funds be used to upgrade or expand the administrative offices and the booking area for the sheriff's department?**

ANSWER: Maybe. The grant funds can be used to upgrade or expand the space for these functions if it is part of a larger jail project needed to address the burden placed on the jail by the State. Since most sheriffs' departments perform both a law

enforcement and a corrections function, the costs must be reviewed to ensure that only those related to the jail function are charged to the grant (Federal and match). The costs of space used for both functions must be prorated with only those associated with the jail function paid with grant funds.

L. Juvenile Facilities

L.1 QUESTION: Are grants used for juvenile facilities restricted to the same purposes as those for adults?

ANSWER: No. In addition to building or expanding correctional facilities for the same purposes as adult facilities, if a State certifies that exigent circumstances exist that require the State to expend funds to build or expand facilities to confine juvenile offenders other than juvenile offenders adjudicated delinquent for an act which, if committed by an adult would be a Part 1 violent crime, it may use grant funds to build or expand juvenile correctional facilities, including pretrial detention facilities and boot camps to increase capacity for the confinement of such nonviolent juvenile offenders.

L.2 QUESTION: Can these facilities be State or local?

ANSWER: Yes. They could be either, but the 15 percent limit on funds for local facilities discussed in Section K limits the total awards that can be made for local juvenile facilities. However, if the State declares that exigent circumstances exist that require the State to expend funds to build or expand facilities to confine juvenile offenders other than juvenile offenders adjudicated delinquent for an act which, if committed by an adult, would be a Part 1 violent crime, it may exceed the 15 percent cap and pass through additional funds for local facilities. All local facilities built with funds in excess of the 15 percent cap must be limited to use for nonviolent juvenile offenders as defined by the Act.

L.3 QUESTION: What are exigent circumstances?

ANSWER: Exigent circumstances are circumstances that require the State to expand capacity for nonviolent juvenile offenders, which may include an increase in juvenile crime prosecutions, overcrowding of juvenile correctional facilities, etc.

L.4 QUESTION: Is the State required to obtain approval from OJP prior to using grant funds for juvenile facilities for nonviolent juvenile offenders?

ANSWER: No. The State must provide a certification that exigent circumstances exist which require it to expend funds for facilities to confine nonviolent juvenile offenders.

L.5 QUESTION: If funds are to be used to construct facilities for violent juvenile offenders, will the State be required to submit separate data on juvenile incarceration?

ANSWER: No. The statutorily defined criteria used to demonstrate eligibility for the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants apply only to offenders in the adult system, except that under Tier 1 of the Violent Offender Incarceration Program the State must assure that it has implemented, or will implement, correctional policies and programs, including Truth-in-Sentencing laws, that among other things "are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders." The application must include a description of how the State has demonstrated or plans to demonstrate a commitment to this and the other criteria outlined in the assurance. States will be asked in future applications to provide information on the number and type of beds built with grant funds, including those in juvenile correctional facilities.

M. Private Facilities

M.1 QUESTION: Can grant funds be used to engage a private entity to build or expand a correctional facility on land owned by the State?

ANSWER: Yes, as long as ownership of the completed facility resides with the State.

M.2 QUESTION: Can grant funds be used to engage a private entity to build or expand a correctional facility that will be privately owned?

ANSWER: No. Ownership of facilities built or expanded with grant funds must reside with the public agency.

M.3 QUESTION: Can a unit of local government use grant funds it receives from the State under this program for privatization?

ANSWER: No. As currently written, the statute only permits States to use the grant funds for privatization. Although a State may use grant funds to privatize a facility or lease beds for adult or juvenile offenders, the privatization provisions do not apply to the 15 percent that may be made available to units of local government.

M.4 QUESTION: What is meant by privatization?

ANSWER: Privatization means the private sector management and operation of a correctional facility that is owned by the State, the leasing of beds from a private entity, or the construction of a State correctional facility by a private entity for the purpose of

increasing bed space for Part 1 violent offenders or freeing existing prison space for the confinement of persons convicted of a Part 1 violent crime. Ownership of facilities built or expanded with grant funds must reside with the State.

M.5 QUESTION: The Program Guidance and Application Kit indicates that a State may use grant funds for the privatization of facilities to carry out the purposes of this program. Does the definition extend to allow a State to contract for beds provided in State prison facilities operated by the Department of Corrections in another State or for jail beds in local jurisdictions?

ANSWER: No. Privatization of facilities extends only to the private sector and does not extend to permit States to contract for beds in State prison facilities operated by Departments of Corrections in other States. Congress, in passing the current statute, prohibits expenditure of grant funds for the operation of a prison, unless such operations are through privatization. In light of the statute, accompanying legislative history, and the definition of privatization, grant funds may ***not*** be expended to contract for beds in State prison facilities in other States. Likewise, a State may not expend grant funds to contract for jail beds in local jurisdictions whether the beds are operated by the county or an established private entity.

M.6 QUESTION: Can grant funds be used to lease beds from a county in another State if the county facility is operated by a private entity?

ANSWER: No. Under the privatization provisions, the lease arrangement must be directly with a private entity.

M.7 QUESTION: Could a State use grant funds to lease a facility from a county that would then be operated by the State under the statutory provision that allows the funds to be used to "build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps"?

ANSWER: Yes, the long-term leasing of a facility from another public entity is one means of expanding capacity, in addition to constructing or purchasing a facility. However, the grant funds may not be used to pay for the operation of the facility or to lease beds from another public agency where the cost of the beds include operating costs. A contract with a private entity is the only means by which grant funds may be used to pay operating costs.

M.8 QUESTION: Can grant funds be used to pay costs, such as overtime and transportation, associated with moving prisoners to a private facility in another location within the State or in another State?

ANSWER: No. Transportation costs are operating costs that do not increase bed space for violent offenders.

M.9 QUESTION: Can a State use grant funds to enter into a contract or lease with a private entity to provide specific services, such as medical services, food service, or drug treatment programs?

ANSWER: No. The expenditures for privatization must result in an increase in bed space for violent offenders or must free space for violent offenders. These costs may, however, be included in a general contract to operate a facility or in the cost of leasing beds from a private entity which results in an increase in beds for violent offenders.

M.10 QUESTION: If a State is currently leasing beds from a private entity, can the grant funds be used to continue these efforts?

ANSWER: No. Using the grant funds to continue current efforts is unallowable for two reasons: 1) to do so may be supplanting State funds with Federal funds, and 2) the Federal funds must be used to expand capacity for violent offenders. States which were leasing beds with State funds must continue to provide both the same level of funding and the same number of beds with State funds before the grant funds may be used for this purpose.

M.11 QUESTION: If a State is leasing beds with State funds and the cost per bed increases each year, is the State required to appropriate more funds every year to maintain the same number of beds, or could the grant funds be used to pay the difference?

ANSWER: The State must maintain both the dollar level to keep from supplanting State funds with Federal funds and the bed level to meet the requirement that the grant funds be used to increase bed space.

*** M.12 QUESTION: Can a State use VOI/TIS grant funds to pay for the same leased beds from year to year for the life of the grant?**

ANSWER: Yes. Under the privatization provision of the VOI/TIS statute, a State may lease beds to increase or free up beds for violent offenders from a private entity. The lease costs may include the operating costs associated with housing and providing services to the offenders placed in those beds. The VOI/TIS statute does not place a limit on the amount of time for which grant funds may be used to lease beds.

*** M.13 QUESTION: Can VOI/TIS funds be used to pay for the purchase of a facility that the State has been leasing from a private vendor?**

ANSWER: Yes. Funds may be used to acquire a facility that will increase or free up bed space for Part 1 violent offenders, which will facilitate a more permanent increase in prison capacity. The grant funds (Federal and match) may not be used to pay for the land that facility sits on. The land must be purchased with nongrant funds.

*** M.14 QUESTION: If a State purchases a building with VOI/TIS funds, could the State also use VOI/TIS funds to pay a private company to operate the facility?**

ANSWER: Yes. The provisions in the VOI/TIS statute allow States to use the grant funds for "privatization of facilities." One example of such privatization is a State contracting with a private vendor to operate a State correctional facility that increases or frees up bed space for Part 1 violent offenders.

N. Implementation and Administration

N.1 QUESTION: How does a State know how much money it is applying for?

ANSWER: Base allocations are available to all qualifying States under Tiers 1 and 3, but all of the other allocations are dependent on the number of States that qualify for each type of funds. Therefore, it is not possible for OJP to provide estimated State allocations. In preparing its application, a State may want to discuss priorities for funding that will be implemented as Federal funds become available. Section 15 of the Application for Federal Assistance requests the estimated funding, which may be left blank, or the applicant may provide an estimate that will be adjusted when the final allocations have been determined.

N.2 QUESTION: If a State receives funds in one year, can it retain that amount until future Federal funding is awarded so that the total can be applied to a construction contract?

ANSWER: Yes. As indicated in the Program Guidance and Application Kit, when the Office of Justice Programs makes an award for a fiscal year, it provides a 5-year grant period, (i.e., the year of the appropriation plus 4 years). This long grant period is provided because OJP realizes that construction projects may take several years to complete and States may need funds from several fiscal years to have sufficient funds for costly projects. New awards are made as supplements to the original award and the award date is extended by a year each fiscal year. These funds are available to the State throughout the grant period to be drawn down as needed.

N.3 QUESTION: How long will grant funds be available for use by the State.

ANSWER: The funds can be used by the State any time during the grant period, as described above. When an award is made, the funds are available to the grantee jurisdiction on an as-needed basis. States will draw down funds as expenses are incurred.

N.4 QUESTION: How is match computed?

ANSWER: The match for projects implemented with VOI/TIS funds must total 10 percent of the total grant project costs—***not*** 10 percent of the Federal funds. If, for example, the amount of Federal funds available for the grant project is $1 million, the minimum match amount is one ninth of the Federal amount or $111,111. The figures for this example are shown below.

Federal Share	$1,000,000	90%
State/Local Share	111,111	10%
Total Project Costs	1,111,111	100%

N.5 QUESTION: Some States may not have their matching funds because the legislature is not in session, the State does know how much match is needed since the amount of Federal funds available to the State is not known, etc. Can a State submit its application if the matching funds have not been appropriated?

ANSWER: Yes. The matching funds are provided on a project-by-project basis and can be put in at any time during the project grant period. The State administrative agency is responsible for ensuring that the matching funds are actually provided and should establish policies regarding the type of commitment that is required prior to making a subaward.

N.6 QUESTION: Can a State use revenues generated from the issuance of bonds to satisfy the cash match requirements?

ANSWER: Yes.

N.7 QUESTION: Can Federal funds that a State receives from the State Criminal Alien Assistance Program (SCAAP) be used as match?

ANSWER: Yes. As a general rule, Federal funds may not be used to match other Federal funds. However, since the SCAAP funds reimburse States for costs associated with holding criminal aliens in State or local facilities, the Federal funds reimburse the States General Fund where they become State funds subject to State spending laws and regulations. Therefore, they may be appropriated/designated to match the VOI/TIS funds.

N.8 QUESTION: If the State legislature has appropriated money for the future construction of a correctional facility, can the State utilize the grant funds for currently planned construction and reserve the money the State appropriated for future construction to house violent offenders? Would this be supplanting since the State is projecting a need for additional bed space for violent offenders in the future and does not have money appropriated for this construction?

ANSWER: Using Federal grant funds in place of already appropriated State funds would be supplanting. If the State projects a need for an additional correctional facility in the future, but has not appropriated the funds for this facility, it could be built with grant funds. Since the Federal funds for each fiscal year will be awarded for a 5-year period, the funds may be allocated to projects that are in the planning stage.

N.9 QUESTION: If a State initiated the planning and construction process after the passage of the Violent Crime Control and Law Enforcement Assistance Act in anticipation of the Federal appropriation, would the use of the grant funds to complete the project be supplanting?

ANSWER: States have been anticipating grant funds from this program since passage of the Crime Act in 1994 and should not be penalized for initiating the planning and construction process in order the make new prison beds available as soon as possible. If State funds have ***not*** been appropriated to complete the project, grant funds may be used for this purpose. However, grant funds may not be used to replace non-Federal resources that are or would have been available for this purpose.

N.10 QUESTION: Can a State use grant funds for projects that have been authorized but for which no funds have been appropriated (e.g., the Department of Corrections has received minimal planning funds but no construction money for several institutions that would be used to house Part 1 violent offenders)?

ANSWER: Yes. Expenditure of grant funds for a project that has been authorized is allowed, provided that no State funds have been appropriated for this project. Grant funds may not be used to supplant (replace) non-Federal funds appropriated for the project.

N.11 QUESTION: Can a State match the entire award rather than each project?

ANSWER: No. The Program Guidance and Application Kit states that "the Federal share of a grant-funded project may not exceed 90 percent of the total costs of a project." A project is a specific planned undertaking or activity. Examples include: construction of a single facility or complex, a lease agreement, or the purchase of an existing facility. Three similar facilities that will be built in three locations around the State would be considered three separate projects. The administration of the VOI/TIS Formula Grant Program with up to 3 percent of the funds available for administration is also considered a project and must be matched.

N.12 QUESTION: If a State has appropriated funds to build a new prison and then decides to use Federal funds to expand the facility, can the State funds appropriated for the original project be used to match the Federal funds?

ANSWER: No. If the funds were originally appropriated to build a facility without Federal funds, the Federal funds that will be used for the expansion must be matched with new State funds. The only exception would be if the State can demonstrate, through appropriations language or other documentation, that the legislature intended to use a portion of the appropriation for match in the event that Federal funds became available.

N.13 QUESTION: If a State is planning to use funds from two or more Federal fiscal year awards for a single construction project, can all of the required match be appropriated at one time?

ANSWER: Yes. In order to accommodate the requirement in many States that all funds needed to complete a project be appropriated before any work can be initiated, OJP/CPO will provide each new award of Federal funds as a supplement to the original award. Thus, all of the Federal funds will be part of a single grant. Therefore, the match for an individual project may be provided at any time during the project grant period, regardless of the timing of the availability of the Federal funds.

N.14 QUESTION: If a State plans to use Federal funds already received as well as anticipated Federal awards to implement a project and the State requires that all funds be appropriated prior to initiating work on the project, can the State appropriate all of the needed funds and then replace the State funds when the Federal funds become available?

ANSWER: Yes, as long as the State's appropriations language clearly indicates that the State plans to use Federal funds anticipated to be received for FYXXXX and FYXXXX for this project and that the appropriated State funds are available only to the extent that the Federal funds fail to be made available.

This would not be considered supplanting State funds with Federal funds because the State Legislature is acting on the reasonable assumption that the Federal funds will be available for this project. In addition to moving ahead to implement the project rather than delaying it until sufficient Federal funds become available, the State is also ensuring that the project will be completed if the Federal funds are less than anticipated. Therefore, the State is not replacing State funds with Federal funds.

N.15 QUESTION: States are allowed to use up to 3 percent of their total formula grant award for costs associated with administration of the program. Do these administrative funds also require a 10 percent match?

ANSWER: Yes. The statute did not establish a separate allocation for program administration

by the States. Therefore, the funds used for administration are covered by the same administration provisions as the program funds and require a 10 percent match.

N.16 QUESTION: Can both the State agency designated by the Governor to administer the VOI/TIS Program and the implementing agency use up to 3 percent of the funds awarded to them for administration of the program?

ANSWER: No. The administrative funds are available to the designated administrative agency to use for direct and indirect costs associated with establishing funding priorities; receiving, accounting for, and disbursing funds; reviewing, processing, monitoring, and evaluating subawards; preparing progress and financial reports; complying with audit requirements; and providing guidance and technical assistance to subgrantees. Construction project management costs for a grant-funded project may be paid with the program funds awarded for that project.

N.17 QUESTION: Could the administrative agency split the administrative funds with the implementing agency to enable the implementing agency to write reports, account for the funds, etc?

ANSWER: No. The administrative funds may only be used by the administrative agency. If the administrative agency does not require the full three percent which is available for this purpose, the unused balance should be added to the program funds that will be subawarded for project implementation.

N.18 QUESTION: When accounting for the grant funds, is the State required to track the type of funds (Federal or matching funds) used for each expenditure?

ANSWER: No. Such an accounting methodology is not required but may be used. But more importantly, the accounting system must be able to identify the source, receipt, obligation, and expenditure of the Federal, match, and other funds.

N.19 QUESTION: If a State is contributing more money to a project than the required 10 percent match, should it account for these excess funds as overmatch?

ANSWER: A State may always overmatch a project. However, under the total project cost concept, any funds included in the grant budget are subject to the same grant requirements and restrictions, including those discussed in Section F: Allowable Uses of Funds. Generally, a State should include only the required match in the grant budget, so that the State's excess contribution can be used for expenditures which may not fall within the allowable cost provisions of the grant. In addition, any funds remaining at the end of an overmatched grant project, must be returned in the same Federal/State ratio as the original contributions.

N.20 QUESTION: Can a State or local jurisdiction that developed plans and architectural drawings

for a new facility two years ago, use these costs to match the grant funds which will be used to build the facility?

ANSWER: No. All grant expenditures (Federal funds and match) must be incurred and obligated within the grant period.

N.21 QUESTION: What reports are the States required to submit?

ANSWER: The States are required to submit the following reports for the VOI/TIS Formula Grant Program:

Quarterly Financial Status Report: This report provides information on grant obligations and expenditures.

Semi-Annual Progress Report: This report provides information on the status of program implementation for the entire VOI/TIS award to include information on subawards, beds under construction or built, lease arrangements, issues and delays, and technical assistance needs.

Individual Project Report: This report is completed when funds are subawarded or funds have been allocated for a specific project. It provides information on the project to include: the facility/activity to be completed, the name, address, and phone number of the implementing agency, the award amount, total project amount, and the project period.

Annual Single Audit Report: Grant recipients who expend $300,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report, in accordance with OMB A-133. See the OJP Financial Guide for more information on reporting requirements.

N.22 QUESTION: When are these reports due?

ANSWER: **Financial Status Report:** This report is due quarterly within 45 days of the end of the calendar quarter. The State will not be allowed to drawdown funds unless an updated report is submitted by the following dates:

Report Period	Due Date
January 1 - March 31	May 15
April 1 - June 30	August 15
July 1 - September 30	November 15
October 1 - December 31	February 15

Semi-Annual Progress Report: This report is due twice a year within 30 days following the report period. States should use the format developed by OJP/CPO. The State will not be allowed to drawdown funds unless an updated report is submitted by the following dates:

Report Period	Due Date
January 1 - June 30	July 30
July 1 - December 31	January 30

Individual Project Report: There is no specified due date for the Individual Project Report. It should be submitted by the State as soon as a subaward is made or funds have been allocated for a specific project. This information is critical to keep Congress apprised of the need for the funds and their uses.

Single Audit Report: The audit report is currently due to the Federal clearinghouse not later than 13 months after the end of the recipient's fiscal year. For fiscal years beginning on or after July 1, 1998, the audit report will be due not later than 9 months after the end of the recipient's fiscal year.

N.23 QUESTION: Are separate Financial Status and Semi-Annual Reports required for each VOI/TIS award (initial award and supplements) that the State receives?

ANSWER: No. Since each new award made by OJP/CPO to a State under the VOI/TIS Program is made as a supplement to the original award, the State has only one award. Therefore, only one of each required report is needed for each report period. The amounts shown on the reports should be increased to reflect each new supplemental award.

N.24 QUESTION: Is a State required to submit an Individual Project Report for each State project or just for subgrantee projects?

ANSWER: An Individual Project Report (IPR) should be submitted for each subgrant award and/or for each project implemented at the State level. An IPR should also be submitted for the allocation of funds for program administration. In States where the administrative agency is also the implementing agency for some or all of the projects, generally an actual subgrant award will not be made. These individual projects should be treated the same as a subgrant for purposes of reporting grant-related activities.

N.25 QUESTION: If a State Department of Labor issues wage rates for various kinds of building projects, which a contractor must meet or exceed, may the State use these rates or is it bound by the Federal wage rates because Federal grant funds are used?

ANSWER: The State's wage rates should be used. The Davis-Bacon Act, which imposes prevailing wage payment requirements on certain contractors, does not apply to this program. Davis-Bacon applies only to contracts to which the Untied States is a party. Since the Federal government will not be a party to any contracts on projects constructed with VOI/TIS grant funds, States are not required to use the Federal wage rates. Similarly, these projects are not subject to the Contract Work Hours and Safety Standards Act standards.

N.26 QUESTION: How is the $450-per-day limit for consultant fees applied to construction and architectural contracts?

ANSWER: The $450-per-day rate is a maximum that can be paid to individual consultants without prior approval from OJP/CPO. This rate should not be automatically provided to all consultants. The rate to be paid should be based on a justification and documentation provided by the consultant to support the requested rate. The rate limit does not apply when hiring or contracting with a company such as a construction company or an architectural firm. In the case of a company, the State should follow its procurement procedures. See the OJP Financial Guide for more information on this issue.

N.27 QUESTION: Special Condition #12 to the original award in 1996 requires a 5 percent bid guarantee, a performance bond, and a payment bond for any single contract of $100,000 or more to a private company or individual. Does this apply to architects and engineers?

ANSWER: Yes.

N.28 QUESTION: Some of the Special Conditions that were attached to the original award have not been included in the Standard and Special Conditions on subsequent awards. Do all of these conditions still apply?

ANSWER: Yes. Since all of the awards are simply supplements to the initial award, unless specifically cleared by a Grant Adjustment Notice, all conditions apply to all of the Violent Offender Incarceration and Truth-in-Sentencing awards.

N.29 QUESTION: Since a formal grant application may not be prepared for projects that are implemented by the agency that is also responsible for administration of the formula grant program for the State, what type of budget documents need to be prepared?

ANSWER: Prior to allocating funds for a specific project, a detailed description of the project and budget should be prepared and kept in a project file that will be available for review by representatives of OJP/CPO, the Office of the Comptroller, the Office of the Inspector General, and any other duly authorized government officials. The description should explain what will be done, how it will result in an increase in bed space for violent offenders, and an implementation schedule. The budget should include a breakdown of all projected costs, the amount of Federal funds, the amount and source of the match and other funds that will be required to complete the project. Changes to the project and/or the budget should be noted in the project file.

N.30 QUESTION: If the grant funds will be used by another State agency or a unit of local government, must the State administrative agency require a formal grant application prior to transferring the funds?

ANSWER: The State administrative agency is responsible for ensuring that grant funds are used in accordance with the grant requirements. Therefore, the agency that receives the funds should be required to submit a formal document such as a grant application or interagency agreement which describes the project to be implemented, how it addresses the statutory purposes of the funds, and an implementation schedule. It should also include a breakdown of all projected costs and should identify the amount of the Federal funds and the amount and source of the match and other funds that will be required to complete the project. The administrative agency has also made a commitment in its application for Federal funds to obtain a certification from the authorized official of a local jurisdiction that it has the ability to fully support, operate, and maintain a correctional facility constructed with the grant funds. The administrative agency should also establish regular reporting requirements, monitor that the project is implemented as approved, and review and formally approve any changes to the original proposal.

*** N.31 QUESTION: Can a Truth-in-Sentencing State use a portion of its administrative budget for costs associated with compiling data needed to demonstrate Truth-in-Sentencing eligibility and monitoring the effects of Truth-in-Sentencing legislation in the State?**

ANSWER: Yes. These costs may be paid with the 3 percent administrative funds allowed under VOI/TIS since they fall within the administrative functions associated with implementation of the program.

*** N.32 QUESTION: Could a State Legislature, that has enacted an appropriation to fully fund the construction and associated costs for a new prison facility, rescind the original appropriation and enact a new one that reduces the State general fund appropriation by the amount of the VOI/TIS funds and appropriates the VOI/TIS grant funds to make up the difference?**

ANSWER: No. This would be a clear case of supplanting State funds with Federal grant funds.

*** N.33 QUESTION: Can VOI/TIS funds be used to pay for the costs of an entire project for a new 350-bed facility that will replace a 200-bed correctional facility?**

ANSWER: The VOI/TIS funds must be used to increase or free up space for Part 1 violent offenders. Funds may not be used to improve, maintain, or replace existing facilities. Therefore, the grant funds could only be used to pay for the new beds that would be added to the system, unless the State can demonstrate that the facility would have been closed regardless of the Federal funds. The State must provide a written justification and receive prior approval from OJP/CPO related solely to the use of grant funds to replace an existing facility. There is no requirement for OJP/CPO approval of specific construction projects, including the siting of the new facility.

*** N.34 QUESTION: Can a unit of local government use the costs associated with project management of a VOI/TIS-funded construction project as match?**

ANSWER: Yes.

*** N.35 QUESTION: If a State plans to use 15 percent of its VOI/TIS funds for a local project, can the county use the costs it incurred to develop plans and architectural drawings for the project two years ago as match for the grant?**

ANSWER: No. The match contribution must be made during the grant project period. Expenses incurred prior to the award of the subgrant to the county could not be used as match.

*** N.36 QUESTION: Could the State legislature appropriate funds as match for the VOI/TIS funds that will be awarded with the Federal funds to local units of government that find it difficult to provide the required match?**

ANSWER: Yes. A State appropriation of funds would qualify as match for local projects, as long as the appropriations language specified that the funds may be used for this purpose.

*** N.37 QUESTION: Could a State overmatch a State project and count that as match for a local project resulting in the entire local project being paid with Federal funds?**

ANSWER: No. As stated in the VOI/TIS Program Guidance and Application Kit, match must be provided on a project-by-project basis. This means that each grant project must include the required matching funds.

*** N.38 QUESTION: If a State, prior to receiving the VOI/TIS funds, entered into a long-term contract with a private entity to build and operate a prison to house Part 1 violent offenders, may the Department of Corrections use grant funds to make the lease payments, when the current appropriation for the lease payments expires?**

ANSWER: No. The VOI/TIS funds must be used to increase or free up space for Part 1 violent offenders. If the State has already entered into a long-term agreement with a private entity, the grant funds may not be used to replace the State funds that would have been available under this agreement.

*** N.39 QUESTION: Could the State Legislature appropriate in FY 1998 the entire match for a new facility that is expected to take 3 years to complete and to use the State's entire VOI/TIS formula grant award for FY 1998-2000?**

ANSWER: Yes. The matching funds must be provided on a project-by-project basis. However, since each VOI/TIS formula award made by OJP/CPO to a State is made as a supplement to the original award in FY 1996, all of the funds received by the State are part of a single award. This change in OJP's normal award process was made to facilitate the administration and implementation of long-term and costly construction projects. As long as appropriation includes language indicating that the funds are to be used as match for future Federal awards and the State agency that administers the formula grant program makes subawards for a multi-year project in the same manner, the entire construction project is considered a single project. Multiple subgrant awards must be made as supplements to the original award. As with any grant project, the matching funds may be provided at any time during the grant project period.

*** N.40 QUESTION: If a State requires the appropriation of funds for an entire project (State and Federal) prior to initiation of construction, could the Legislature appropriate in FY 1998 the entire amount needed to complete a new prison facility that will be built with the State's FY 1998-2000 VOI/TIS awards and then replace the State appropriation with the Federal funds as they are received in FY 1999 and 2000?**

ANSWER: Yes. Rather than hold up the entire project until all of the Federal grant funds have been received, the State Legislature could appropriate sufficient funds for the entire project and include language in the appropriation indicating that the State anticipates Federal grant funds in the amount of $XXX million in FY 1998-2000 and that the State funds (in addition to the match) are available only to the extent that the Federal funds do not become available.

*** N.41 QUESTION: Could a Department of Corrections use VOI/TIS funds to add 100 beds to a facility being built with funds appropriated by the State Legislature and use the State's contribution to that facility as match?**

ANSWER: No. The State appropriation, which did not contain any Federal funds, was specifically allocated to build the new facility. If the project is expanded with Federal funds, those Federal funds must be matched with new funds.

*** N.42 QUESTION: Can VOI/TIS funds be used to pay the cost overruns on a project being built with funds appropriated by the State Legislature?**

ANSWER: Maybe. The VOI/TIS funds must be used to increase or free up space for Part 1 violent offenders. The State, in appropriating the funds to build the facility, made a commitment to complete it and would, in the absence of Federal grant funds, be expected to appropriate additional funds to cover the cost overruns. To use the grant funds for this purpose, the State must show that the State funds would not be

available and that absent the Federal funds, the number of beds would have to be reduced. Any grant funds used for this purpose must be matched with a new appropriation.

*** N.43 QUESTION: If the State Legislature has appropriated funds to construct a new facility, could the VOI/TIS funds be used to pay increased costs resulting from change orders made by the Department of Corrections modifying the plans to add program space?**

ANSWER: No. The VOI/TIS funds may not be used to simply add program space to an existing facility or a facility under construction with State funds. The funds must be used to increase or free up beds for Part 1 violent offenders. If the Department of Corrections modified the plans to add extra beds, the increased costs would be an allowable expense with VOI/TIS funds.